

That is why in cases where, as here, the “thing of value” is an otherwise legitimate campaign contribution, the government must prove the existence of a specific and corrupt agreement to give and receive the campaign contribution in exchange for an official act.⁷⁴⁹ In the language used by the courts, the government must prove the existence of a *quid pro quo*.⁷⁵⁰ Of course, the *quid pro quo* need not be spelled out in express terms or language. Otherwise prosecution of a corrupt agreement could be thwarted by the use of artful communication.⁷⁵¹ The intent of the official and the contributor to enter into the corrupt agreement may be proved from the words the official and the contributor spoke and the actions they took, as well as the

(...continued)
(same).

⁷⁴⁹This requirement applies uniquely to circumstances involving legitimate campaign contributions. Where a payment labeled a campaign contribution is merely a ruse for a gift inuring to the candidate’s personal benefit, the payment may form the basis of a gratuity charge under 18 U.S.C. § 201(c), in which case the government need not prove the existence of a *quid pro quo*. See, e.g., *Brewster*, 506 F.2d at 81. Of course, a ruse contribution made pursuant to a *quid pro quo* would also form the basis for a bribery charge.

⁷⁵⁰See *United States v. Sun-Diamond Growers*, 526 U.S. 398 (1999) (defining *quid pro quo* under bribery statute). Cf. *Brewster*, 506 F.2d at 81 (“There must be more specific knowledge of a definite official act for which the contributor intends to compensate before an official’s action crosses the line between guilt and innocence.”); see also *DOJ Criminal Resource Manual* at 2046 (“where the transaction represents a bona fide campaign contribution, prosecutors must normally be prepared to prove that it involved a *quid pro quo* understanding and thereby constituted a ‘bribe’”); *McCormick v. United States*, 500 U.S. 257 (1991) (holding under Hobbs Act that when the allegedly corrupt payment represents a bona fide campaign contribution, government must prove existence of *quid pro quo*).

⁷⁵¹See *Evans*, 504 U.S. at 274 (Kennedy, J., concurring) (“The official and the payor need not state the *quid pro quo* in express terms, for otherwise the law’s effect could be frustrated by winks and nods. The inducement from the official is criminal if it is express or if it is implied from his words and actions, so long as he intends it to be so and the payor so interprets.”); see also *McCormick*, 500 U.S. at 270 (“It goes without saying that matters of intent are for the jury to consider.”).